KRISHNAN NAMBIAR G PERABAKARAN & ORS

v.

DR P MAHENDRAN & ANOR

HIGH COURT MALAYA, MELAKA
LOW HOP BING J
[CIVIL SUIT NO: 22-253-1999]
19 NOVEMBER 2003

CIVIL PROCEDURE: *Trial - Procedure - Claim for medical negligence - Issues of liability and quantum raised therein - Whether to be heard jointly or separately - Rules of the High Court 1980 O. 33 r. 2, O. 37, O. 94 r. 4*

The plaintiffs had brought an action for medical negligence against the defendants raising both the issues of liability and quantum. In the course of the trial, a point was raised by the defendants that the issues ought to be heard in one and the same proceedings, and not in two separate proceedings. The plaintiffs however argued that the issues ought to continue to be tried separately as the court, upon a proper reading of O. 33 r. 2, O. 37 and O. 92 r. 4 Rules of the High Court 1980, had the jurisdiction to do so, and further the defendants would not in any way be prejudiced by it.

Held:

[1] It is trite law that in the hearing of a suit where the issues of liability and quantum are pleaded in the plaintiff's claim, the court is empowered to hear and determine liability first, thereby leaving the issue of quantum to be decided at a later stage. (p 76 a)

[2] The judicial trend in respect of the trial of the suit now before the court is quite settled, namely, it is more appropriate to hear and determine the issue of liability first and to leave the quantification of damages to a separate proceeding. Hence, the trial herein should be continued on the basis that liability is to be heard and determined first, and that the issue of quantification of damages shall be determined in a separate proceeding should the necessity arise. (p 76 g)

[Order accordingly.]

Case(s) referred to:
Coenen v. Payne & Another [1974] 2 All ER 1109 ***(refd)***
Federal Insurance Co v. Nakano Singapore (Pte) Ltd [1992] 1 SLR 390 ***(refd)***
Hawkins v. New Mendip Engineering Ltd [1996] 3 All ER 228 ***(refd)***
Healey v. A Waddington & Sons [1954] 1 All ER 861 ***(refd)***
Smith & Co v. Hargrove & Co [1886] QBD Vol XVI 183 ***(refd)***
Stevens v. William Nash Ltd [1966] 1 WLR 1550 ***(refd)***
Thanaraj Manikam & Ors v. Lower Perak Tamil Co-operative Society [1997] 4 MLJ 82 ***(refd)***

Legislation referred to:
Rules of the High Court 1980, O. 33 rr. 2, 3(2), O. 37. O. 92 r. 4

Rules of the High Court [UK], O. 33 r. 4(2)

Other source(s) referred to:
Malaysian High Court Practice, MLJ 1998 Desk edn, vol 1, pp 2275-2295

For the defendants - PS Ranjan (Manmohan S Dhillon); M/s PS Ranjan & Co
For the plaintiffs - Srimurugan; M/s M Manoharan & Co

Reported by WA Sharif

JUDGMENT

Low Hop Bing J:

Introduction

In the course of the trial of this suit brought by the plaintiffs against the defendants on the basis of the alleged medical negligence on the part of the first defendant, the defendants raised an issue to the effect that the trial herein should proceed to determine both the question of liability and quantum in one and the same proceedings and not in two separate proceedings.

Submission For Defendants

Encik PS Ranjan, assisted by Manmohan S Dhillon, both learned counsel for the defendants, submitted that the plaintiffs did not apply nor intended to proceed with, and the court did not order, separate trials on liability and quantum.

He added that the second plaintiff has given evidence in chief regarding damages, but has failed to plead the sums claimed under each item of special damages, besides failing to make discovery of any document relating to expenses incurred.

He concluded that if the plaintiffs wish to now apply for an order for separate trials, they must state the grounds for such order and the reasons for the delay in making the application.

Response By Plaintiffs

Encik Srimurugan, learned counsel for the plaintiffs, responded that this court has the jurisdiction to try issues of liability and quantum separately, on the basis of O. 33 r. 2, O. 37 and O. 92 r. 4 of the Rules of the High Court 1980; *Coenen v. Payne and Another* [1974] 2 All ER 1109; *Smith & Co v. Hargrove & Co* [1886] QBD Vol XVI 183; *Stevens v. William Nash Ltd* [1966] 1 WLR 1550.

He submitted that there would be no prejudice to the defendants if the issues of liability and damages were tried separately and that the trial has so far proceeded as such.

Decision Of The Court

The question for decision by me may be formulated as follows:

> In a trial based on alleged medical negligence, in which liability and quantum have been raised in the plaintiff's claim, should the trial be more appropriately proceeded with by hearing and determining the issues of liability and quantum jointly or separately?

Order 33 r. 2 provides for the time etc of the trial of questions or issues in the following words:

> The Court may order any question or issue arising in a cause or matter, whether of fact or law or partly of fact and partly of law, and whether raised by the pleadings or otherwise, to be tried before, at or after the trial of the cause or matter, and may give directions as to the manner in which the question or issue shall be stated.

Further O. 33 r. 3(2) provides that in any action begun by writ, different questions or issues may be ordered to be tried by different modes of trial and one or more questions or issues may be ordered to be tried before the others.

These rules serve the purpose of saving unnecessary costs and time: see the judgment of Chan Sek Keong J (as he then was) in *Federal Insurance Co v. Nakano Singapore (Pte) Ltd* [1992] 1 SLR 390, at 394, which was followed in *Thanaraj a/l Manikam & Ors v. Lower Perak Tamil Co-operative Society* [1997] 4 MLJ 82.

The above rules have conferred upon the court unfettered discretion to direct that an issue be tried before, at or after the trial of the cause or matter and to give directions. (see pp. 2275 and 2295 of *Malaysian High Court Practice* MLJ 1998 Desk edn. vol.1).

In my view, it is trite law that in the hearing of a suit where the issues of liability and quantum are pleaded in the plaintiff's claim, the court is empowered to hear and determine liability first, thereby leaving the issue of quantum to be decided at a later state: *Coenen, supra*, *Smith, supra*, *Hawkins v. New Mendip Engineering Ltd* [1996] 3 All ER 228; *Healey v. A Waddington & Sons* [1954] 1 All ER 861 CA (see p. 2296 *Malaysian High Court Practice, supra*).

By way of illustration, in *Coenen, supra*, the plaintiff brought an action for negligence against the defendant claiming damages. The defendant applied for an order under O. 33 r. 4(2) (UK), which is in *pari materia* with our O. 33 r. 3(2), for separate trials of the issue of liability and damages. The trial judge refused the application. The defendant's appeal was allowed by the Court of Appeal. Lord Denning MR observed that there was a strong point to be made in favour of separate trials for liability and damages and that wherever it is just and convenient to do so, the courts should be more ready to grant separate trials than they used to.

In *Smith, supra*, it was held that where liability and damages are disputed in an action, it is a proper exercise of discretion to order the question of liability to be tried first, and the quantum of damages to be postponed.

In *Stevens, supra*, the trial judge rejected the plaintiff's application to decide the issue of liability first and to postpone the assessment of damages to a later date, and decided that both the issues of liability and damages should be proceeded together. On appeal, Winn LJ observed, obiter, that the better course in that particular action for a personal injury claim might have been better for the trial judge to have decided to try the issue of liability and to have postponed the quantification of damages.

In my view, the judicial trend in respect of the trial of the suit before me is quite settled ie, it is more appropriate to hear and determine the issue of liability first and to leave the quantification of damages to a separate proceeding.

On the foregoing grounds, I order that the trial herein should be continued on the basis that liability is to be heard and determined first, and that the issue of quantification of damages shall be determined in a separate proceeding should the necessity arise in due course.

Costs in the cause.